

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 021

June 24, 1958

CAPITAL ASSETS: FICTITIOUS RADIO CHARACTERS

Syllabus:

The sale of fictitious radio characters under a contract which contains no element of personal service by the owners is the sale of a capital asset and, consequently, the gains realized are taxable as capital gains.

Taxpayers entered into a contract with Broadcasting Company for the sale of the fictitious characters "A and B". The contract contained a clause which read "Nothing herein contained shall be construed to require Sellers to render any services pursuant hereto". Advice is requested whether the gains realized by taxpayers on the sale constitutes ordinary income or capital gains.

A sale of personal services is ordinary income, and it is established that a contract for personal services to be rendered is not property. On the other hand, items which are distinct from the person of the owner can be property. The situation is akin to the sale of a trade name or the good will of a going business, and such a sale is considered to be the sale of a capital asset. Furthermore, a number of cases have recognized a common law property right in the names of fictitious characters. "A and B" are imaginary characters separate and distinct from the actors who portray them and in instant case Broadcasting Company could perpetuate them by substituting other actors to portray the parts. The name can be regarded as a capital asset, and the contract was a sale of property with no element of personal services involved. Therefore, taxpayers gains should be treated as capital gains.